

HOUSE BILL NO. 100

INTRODUCED BY SOFT

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (8), on a second conviction, the person shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may not be suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed

1 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
2 seized and subjected to the procedure provided under 61-8-421.

3 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
4 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
5 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
6 omission established by the owner to have been committed or omitted by a person other than the owner  
7 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
8 criminal laws of this state or the United States.

9 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
10 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
11 or other act on which the forfeiture is sought.

12 (4) (a) On the fourth or subsequent conviction, the person ~~is guilty of a felony offense and~~ shall  
13 be punished by imprisonment for a term of not less than ~~1 year~~ 6 months or more than ~~10 years~~ 1 year and  
14 by a fine of not less than \$1,000 or more than \$10,000. ~~Except as provided in subsection (8),~~  
15 ~~notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed~~  
16 ~~under this subsection, the~~ The imposition or execution of the ~~first 6 months of the~~ imprisonment sentence  
17 imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.

18 (b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve  
19 a supervised release term of not less than 1 year or more than 2 years. The release must be supervised  
20 by the department of corrections, which may order all or any portion of the supervised release term to be  
21 served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation  
22 apply to the supervised release.

23 (c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions  
24 during the period of supervised release. Reasonable restrictions or conditions may include:

25 (i) conditions for supervised release;

26 (ii) payment of a fine as provided in 46-18-231;

27 (iii) payment of costs as provided in 46-18-232 and 46-18-233;

28 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

29 (v) community service;

30 (vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the

1 protection of society; or

2 (vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).

3 (d) If a violation of the restrictions or conditions of the supervised release is established, the court  
4 may continue the period of supervised release or may require the defendant to serve the remainder of the  
5 supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the  
6 remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with  
7 all or part of the time already served on supervised release.

8 (e) The person may not be sentenced to the department of corrections for placement in an  
9 appropriate correctional institution or program. The court shall specify one of the following facilities as the  
10 place in which the term of imprisonment must be served, except that a prerelease center or boot camp may  
11 not be specified without the prior approval of the department of corrections:

12 (i) a state prison;

13 (ii) a regional correctional facility;

14 (iii) a county jail;

15 (iv) a boot camp;

16 (v) a prerelease center.

17 (f) The court shall order a person who is financially able to do so to pay the costs of imprisonment  
18 and supervised release under this subsection (4) and of the information course and treatment under  
19 subsection (5).

20 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant  
21 shall complete an alcohol information course at an alcohol treatment program approved by the department  
22 of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug  
23 treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made  
24 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
25 by the department of public health and human services. On conviction of a second or subsequent offense  
26 under this section, in addition to the punishment provided in this section, regardless of disposition, the  
27 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
28 department of public health and human services, which must include alcohol or drug treatment, or both.  
29 As long as the alcohol information course is approved as provided in this subsection and the treatment is  
30 provided by a certified chemical dependency counselor, the defendant may attend the information course

1 and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment  
 2 program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined  
 3 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
 4 by the department of corrections. Upon determination, the court shall order the defendant's appropriate  
 5 level of treatment. If more than one counselor makes a determination as provided in this subsection, the  
 6 court shall order an appropriate level of treatment based upon the determination of one of the counselors.  
 7 On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for  
 8 a period of at least 1 year from the date of admission to the program. A court or counselor may not require  
 9 attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help  
 10 program. A defendant may voluntarily participate in self-help programs. Each counselor providing education  
 11 or treatment shall, at the commencement of the education or treatment, notify the court that the defendant  
 12 has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend  
 13 the information course or treatment program, the counselor shall notify the court of the failure.

14 (6) For the purpose of determining the number of convictions under this section, "conviction"  
 15 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
 16 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
 17 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
 18 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
 19 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
 20 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
 21 there has not been an additional conviction for an offense under this section for a period of 5 years after  
 22 a prior conviction under this section, then all records and data relating to the prior conviction are  
 23 confidential criminal justice information, as defined in 44-5-103, and public access to the information may  
 24 only be obtained by district court order upon good cause shown.

25 (7) For the purpose of calculating subsequent convictions under this section, a conviction for a  
 26 violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

27 (8) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second,  
 28 or third offense be served in another facility made available by the county and approved by the sentencing  
 29 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court  
 30 may impose restrictions on the defendant's ability to leave the premises of the facility and require that the

1 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
2 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant  
3 referred by the sentencing court.

4 (9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
5 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section for~~  
6 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
7 chapter 18, part 10.

8 (10) A court may not defer imposition of sentence under this section."  
9

10 **Section 2.** Section 61-8-722, MCA, is amended to read:

11 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
12 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
13 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

14 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
15 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
16 by a fine of not less than \$300 or more than \$500.

17 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
18 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
19 and by a fine of not less than \$500 or more than \$1,000.

20 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
21 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
22 seized and subjected to the procedure provided under 61-8-421.

23 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
24 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
25 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
26 omission established by the owner to have been committed or omitted by a person other than the owner  
27 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
28 criminal laws of this state or the United States.

29 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
30 interest if the person did not know and could not have reasonably known of the unlawful possession, use,

1 or other act on which the forfeiture is sought.

2 (4) (a) On the fourth or subsequent conviction, the person ~~is guilty of a felony offense and~~ shall  
3 be punished by imprisonment for a term of not less than ~~1 year~~ 6 months or more than ~~10 years~~ 1 year and  
4 by a fine of not less than \$1,000 or more than \$10,000. ~~Except as provided in subsection (9),~~  
5 ~~notwithstanding any other provision providing for suspension of execution of a sentence imposed under~~  
6 ~~this subsection, the~~ The imposition or execution of the ~~first 6 months of the~~ imprisonment sentence  
7 imposed for a fourth or subsequent offense may not be suspended. The person is not eligible for parole.

8 (b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve  
9 a supervised release term of not less than 1 year or more than 2 years. The release must be supervised  
10 by the department of corrections, which may order all or any portion of the supervised release term to be  
11 served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation  
12 apply to the supervised release.

13 (c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions  
14 during the period of supervised release. Reasonable restrictions or conditions may include:

15 (i) conditions for supervised release;

16 (ii) payment of a fine as provided in 46-18-231;

17 (iii) payment of costs as provided in 46-18-232 and 46-18-233;

18 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

19 (v) community service;

20 (vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
21 protection of society; or

22 (vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).

23 (d) If a violation of the restrictions or conditions of the supervised release is established, the court  
24 may continue the period of supervised release or may require the defendant to serve the remainder of the  
25 supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the  
26 remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with  
27 all or part of the time already served on supervised release.

28 (e) The person may not be sentenced to the department of corrections for placement in an  
29 appropriate correctional institution or program. The court shall specify one of the following facilities as the  
30 place in which the term of imprisonment must be served, except that a prerelease center or boot camp may

1 not be specified without the prior approval of the department of corrections:

2 (i) a state prison;

3 (ii) a regional correctional facility;

4 (iii) a county jail;

5 (iv) a boot camp;

6 (v) a prerelease center.

7 (f) The court shall order a person who is financially able to do so to pay the costs of imprisonment  
8 and supervised release under this subsection (4) and of the information course and treatment under  
9 subsection (6).

10 (5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
11 suspension of driver's licenses, apply to any conviction under 61-8-406.

12 (6) In addition to the punishment provided in this section, regardless of disposition, the defendant  
13 shall complete an alcohol information course at an alcohol treatment program approved by the department  
14 of public health and human services, which must include alcohol or drug treatment, or both, in accordance  
15 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the  
16 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
17 course or treatment program. If the defendant fails to attend the course or the treatment program, the  
18 counselor shall notify the court of the failure.

19 (7) For the purpose of determining the number of convictions under this section, "conviction"  
20 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
21 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
22 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
23 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
24 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
25 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
26 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
27 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
28 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
29 court order upon good cause shown.

30 (8) For the purpose of calculating subsequent convictions under this section, a conviction for a

1 violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

2 (9) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second,  
3 or third offense be served in another facility made available by the county and approved by the sentencing  
4 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court  
5 may impose restrictions on the defendant's ability to leave the premises of the facility and require that the  
6 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
7 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant  
8 referred by the sentencing court.

9 (10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
10 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
11 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
12 chapter 18, part 10.

13 (11) A court may not defer imposition of sentence under this section."  
14

15 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.  
16

-END-



STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for HB0100, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act revising the punishment for driving under the influence and for driving with an alcohol concentration in excess of .10 and providing an immediate effective date.

ASSUMPTIONS:

**Department of Corrections (DOC):**

1. Of the 76 offenders, 48 convicted of fourth offense DUI were sentenced to Women's Correctional Center (WCC) or Montana State Prison (MSP).
2. Currently, the average length of sentence imposed for these offenders was 7.2 years with 1.6 years suspended. Based on DOC statistics that inmates serve an average of 34% of their imposed sentences, these offenders will serve approximately two years in a correctional facility.
3. Offenders under this bill on an average will serve 263 days of their sentences.
4. Average daily cost at MSP including outside medical costs is \$44.47. The average daily cost for pre-release is \$37.63. The average daily cost for parole is \$2.68.
5. It is assumed that inmates are not financially able to contribute toward the costs of imprisonment, supervised release, and treatment.
6. It is assumed this bill would go into effect 7/1/97.
7. It is assumed that for fiscal years 1998 and 1999 there would be 12 admissions per quarter under this offense, each serving an average sentence of 9 months.
8. In fiscal year 1996, 71.4% of the inmates convicted under this offense were released from MSP or WCC to pre-release facilities. The remaining 28.6% were released to parole.
9. It is assumed the recidivism rate for offenders convicted under this bill will not change from current rates, therefore, there will be no fiscal impact due to returns.

**Department of Justice (DOJ):**

10. In calendar year 1996 there were 76 fourth offense DUI convictions per Motor Vehicle Division (MVD), DOJ data.
11. The Montana Highway Patrol (MHP) writes approximately 27 percent of all DUI citations per Department of Transportation (MDT) data. In calendar 1996 the MHP was responsible for issuing 21 DUI citations resulting in fourth offense convictions. (76 x 27% = 21)
12. HB100 reduces fourth DUI offense to a misdemeanor from a felony and makes MHP responsible for the incarceration costs rather than the Department of Corrections. Sentencing is at the discretion of local judges and varies from 6 months to 1 year.
13. The statewide average daily prisoner per diem for MHP prisoners is \$43.21.
14. MHP incarceration costs (prisoner per diem) would increase by approximately \$238,649 per year. (21 x \$43.21 x 263 = \$238,649)

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
MHP-Prisoner Per Diem	238,649	238,649
MSP-Daily Custody Costs	<u>(17,011)</u>	<u>(246,445)</u>
Total	221,638	(7,796)


Funding:

General Fund (01)	221,638	(7,796)
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Net Impact on Fund Balance: (Revenue minus expense)

General Fund (01)	(221,638)	7,796
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(Continued)

  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

LOREN SOFT, PRIMARY SPONSOR      DATE

Revised Fiscal Note for HB0100, as intro.

**HB 100**

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The remaining fourth offense DUI convictions would be the responsibility of local law enforcement agencies.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. The reduction in sentence length that this bill proposes will decrease the length of time offenders are under DOC supervision after serving their sentence (from an average currently of 3.6 years to 1 to 2 years under this bill). This savings will not be realized until fiscal year 2000.
2. The DOC estimates approximately 400 fourth offense DUI cases that have not been adjudicated.
3. The reduction in sentence length that HB100 proposes would decrease the length of time offenders are on parole after serving their sentence (from a current average of 3.6 years to 1 to 2 years). An associated savings would not be realized until fiscal 2000.
4. The Montana Highway Patrol prisoner per diem costs would continue to increase as contracts with local law enforcement agencies are renegotiated.

## 1 HOUSE BILL NO. 100

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE  
6 INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING  
7 SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 61-8-714, MCA, is amended to read:

12 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
13 subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
14 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
15 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
16 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
17 or mental well-being.

18 (2) Except as provided in subsection (8), on a second conviction, the person shall be punished by  
19 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
20 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
21 (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition  
22 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

23 (3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished  
24 by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served  
25 consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as  
26 provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of  
27 execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of  
28 the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may  
29 not be suspended.

30 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed

1 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
2 seized and subjected to the procedure provided under 61-8-421.

3 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
4 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
5 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
6 omission established by the owner to have been committed or omitted by a person other than the owner  
7 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
8 criminal laws of this state or the United States.

9 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
10 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
11 or other act on which the forfeiture is sought.

12 (4) (a) ~~On the fourth or subsequent conviction, the person is guilty of a felony offense and IS~~  
13 GUILTY OF A FELONY OFFENSE AND shall be punished by imprisonment for a term of not less than ~~1 year~~  
14 6 months or more than ~~40 years~~ 1 year 13 MONTHS and by a fine of not less than \$1,000 or more than  
15 \$10,000. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary providing for~~  
16 ~~suspension of execution of a sentence imposed under this subsection, the~~ The imposition or execution of  
17 ~~the first 6 months of the~~ imprisonment sentence imposed for a fourth or subsequent offense may not be  
18 suspended. The person is not eligible for parole.

19 (b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve  
20 a supervised release term of not less than 1 year or more than 2 years. The release must be supervised  
21 by the department of corrections, which may order all or any portion of the supervised release term to be  
22 served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation  
23 apply to the supervised release.

24 (c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions  
25 during the period of supervised release. Reasonable restrictions or conditions may include:

26 (i) conditions for supervised release;

27 (ii) payment of a fine as provided in 46-18-231;

28 (iii) payment of costs as provided in 46-18-232 and 46-18-233;

29 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

30 (v) community service;

1 (vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
2 protection of society; or

3 (vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).

4 (d) If a violation of the restrictions or conditions of the supervised release is established, the court  
5 may continue the period of supervised release or may require the defendant to serve the remainder of the  
6 supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the  
7 remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with  
8 all or part of the time already served on supervised release.

9 (e) ~~The person may not be sentenced to the department of corrections for placement in an~~  
10 ~~appropriate correctional institution or program.~~ The court shall specify one of the following facilities as the  
11 place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE  
12 PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE  
13 CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be  
14 specified BY THE COURT without the prior approval of the department of corrections:

15 (i) a state prison;

16 (ii) a regional correctional facility;

17 (iii) a county jail;

18 (iv) a boot camp;

19 (v) a prerelease center;

20 (VI) A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY.

21 (f) The court shall order a person who is financially able to do so to pay the costs of imprisonment  
22 and supervised release under this subsection (4) and of the information course and treatment under  
23 subsection (5).

24 (G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN  
25 SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE  
26 OFFENDER IN ANOTHER FACILITY OR PROGRAM.

27 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant  
28 shall complete an alcohol information course at an alcohol treatment program approved by the department  
29 of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug  
30 treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made

1 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
2 by the department of public health and human services. On conviction of a second or subsequent offense  
3 under this section, in addition to the punishment provided in this section, regardless of disposition, the  
4 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
5 department of public health and human services, which must include alcohol or drug treatment, or both.  
6 As long as the alcohol information course is approved as provided in this subsection and the treatment is  
7 provided by a certified chemical dependency counselor, the defendant may attend the information course  
8 and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment  
9 program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined  
10 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
11 by the department of corrections. Upon determination, the court shall order the defendant's appropriate  
12 level of treatment. If more than one counselor makes a determination as provided in this subsection, the  
13 court shall order an appropriate level of treatment based upon the determination of one of the counselors.  
14 On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for  
15 a period of at least 1 year from the date of admission to the program. A court or counselor may not require  
16 attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help  
17 program. A defendant may voluntarily participate in self-help programs. Each counselor providing education  
18 or treatment shall, at the commencement of the education or treatment, notify the court that the defendant  
19 has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend  
20 the information course or treatment program, the counselor shall notify the court of the failure.

21 (6) For the purpose of determining the number of convictions under this section, "conviction"  
22 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
23 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
24 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
25 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
26 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
27 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
28 there has not been an additional conviction for an offense under this section for a period of 5 years after  
29 a prior conviction under this section, then all records and data relating to the prior conviction are  
30 confidential criminal justice information, as defined in 44-5-103, and public access to the information may

1 only be obtained by district court order upon good cause shown.

2 (7) For the purpose of calculating subsequent convictions under this section, a conviction for a  
3 violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

4 (8) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second,  
5 or third offense be served in another facility made available by the county and approved by the sentencing  
6 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court  
7 may impose restrictions on the defendant's ability to leave the premises of the facility and require that the  
8 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
9 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant  
10 referred by the sentencing court.

11 (9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
12 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
13 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
14 chapter 18, part 10.

15 (10) A court may not defer imposition of sentence under this section."  
16

17 **Section 2.** Section 61-8-722, MCA, is amended to read:

18 "**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
19 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
20 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

21 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
22 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
23 by a fine of not less than \$300 or more than \$500.

24 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
25 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
26 and by a fine of not less than \$500 or more than \$1,000.

27 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
28 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
29 seized and subjected to the procedure provided under 61-8-421.

30 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common

1 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
 2 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
 3 omission established by the owner to have been committed or omitted by a person other than the owner  
 4 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
 5 criminal laws of this state or the United States.

6 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
 7 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
 8 or other act on which the forfeiture is sought.

9 (4) (a) On the fourth or subsequent conviction, the person ~~is guilty of a felony offense and IS~~  
 10 GUILTY OF A FELONY OFFENSE AND shall be punished by imprisonment for a term of not less than ~~1 year~~  
 11 6 months or more than ~~10 years~~ 1 year 13 MONTHS and by a fine of not less than \$1,000 or more than  
 12 \$10,000. ~~Except as provided in subsection (9), notwithstanding any other provision providing for~~  
 13 ~~suspension of execution of a sentence imposed under this subsection, the~~ The imposition or execution of  
 14 the ~~first 6 months of the~~ imprisonment sentence imposed for a fourth or subsequent offense may not be  
 15 suspended. The person is not eligible for parole.

16 (b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve  
 17 a supervised release term of not less than 1 year or more than 2 years. The release must be supervised  
 18 by the department of corrections, which may order all or any portion of the supervised release term to be  
 19 served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation  
 20 apply to the supervised release.

21 (c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions  
 22 during the period of supervised release. Reasonable restrictions or conditions may include:

23 (i) conditions for supervised release;

24 (ii) payment of a fine as provided in 46-18-231;

25 (iii) payment of costs as provided in 46-18-232 and 46-18-233;

26 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

27 (v) community service;

28 (vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
 29 protection of society; or

30 (vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).



1           (d) If a violation of the restrictions or conditions of the supervised release is established, the court  
 2 may continue the period of supervised release or may require the defendant to serve the remainder of the  
 3 supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the  
 4 remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with  
 5 all or part of the time already served on supervised release.

6           ~~(e) The person may not be sentenced to the department of corrections for placement in an~~  
 7 ~~appropriate correctional institution or program.~~ The court shall specify one of the following facilities as the  
 8 place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE  
 9 PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE  
 10 CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be  
 11 specified BY THE COURT without the prior approval of the department of corrections:

12           (i) a state prison;

13           (ii) a regional correctional facility;

14           (iii) a county jail;

15           (iv) a boot camp;

16           (v) a prerelease center.

17           (f) The court shall order a person who is financially able to do so to pay the costs of imprisonment  
 18 and supervised release under this subsection (4) and of the information course and treatment under  
 19 subsection (6).

20           (G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN  
 21 SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE  
 22 OFFENDER IN ANOTHER FACILITY OR PROGRAM.

23           (5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
 24 suspension of driver's licenses, apply to any conviction under 61-8-406.

25           (6) In addition to the punishment provided in this section, regardless of disposition, the defendant  
 26 shall complete an alcohol information course at an alcohol treatment program approved by the department  
 27 of public health and human services, which must include alcohol or drug treatment, or both, in accordance  
 28 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the  
 29 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
 30 course or treatment program. If the defendant fails to attend the course or the treatment program, the

1 counselor shall notify the court of the failure.

2 (7) For the purpose of determining the number of convictions under this section, "conviction"  
3 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
4 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
5 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
6 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
7 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
8 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
9 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
10 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
11 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
12 court order upon good cause shown.

13 (8) For the purpose of calculating subsequent convictions under this section, a conviction for a  
14 violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

15 (9) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second,  
16 or third offense be served in another facility made available by the county and approved by the sentencing  
17 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court  
18 may impose restrictions on the defendant's ability to leave the premises of the facility and require that the  
19 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
20 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant  
21 referred by the sentencing court.

22 (10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
23 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
24 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
25 chapter 18, part 10.

26 (11) A court may not defer imposition of sentence under this section."  
27

28 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.  
29

-END-

*LC*

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0100, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act revising the punishment for driving under the influence and for driving with an alcohol concentration in excess of .10 and providing an immediate effective date.

ASSUMPTIONS:

**Department of Corrections (DOC):**

1. Since October 1995, there have been 132 offenders convicted of a fourth offense DUI.
2. Currently, the average length of the net sentence imposed for these offenders was 3.5 years. Based on DOC statistics that inmates serve an average of 34% of their imposed sentences, these offenders would serve approximately fourteen months in a correctional facility.
3. Offenders under HB 100 on an average would serve 285 days of their sentences.
4. Forty-eight convicted offenders were sentenced to the Women's Correctional Center (WCC) or the Montana State Prison (MSP). Thirty-one went directly to pre-release facilities. The remaining offenders served county jail time, were under the supervision of the Intensive Supervision Program, received suspended sentences, or were placed under home arrest.
5. The average daily cost at MSP including outside medical costs is \$44.47. The average daily cost for pre-release is \$37.63. The average daily cost for parole is \$2.68.
6. It is assumed that inmates would not be financially able to contribute toward the costs of imprisonment, supervised release, and treatment.
7. The effective date of this bill would be July 1, 1997.
8. It is assumed that for fiscal 1998 and fiscal 1999 there would be 12 admissions per quarter to MSP or WCC under this offense, each serving an average sentence of 9.5 months.
9. In fiscal 1996, 50% of the inmates convicted under this offense were released from MSP or WCC to pre-release facilities. The remaining 50% were released to parole.
10. It is assumed the recidivism rate for offenders convicted under this bill would not change from current rates; therefore, there would be no fiscal impact due to returns.

**Department of Justice (DOJ):**

11. Current level spending for the Department of Justice is not expected to increase.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<b>Department of Corrections:</b>	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
MSP-Daily Custody Costs	(28,419)	(240,835)
<u>Funding:</u>		
General Fund (01)	(28,419)	(240,835)
<u>Net Impact on Fund Balance: (revenue minus expenses)</u>		
General Fund (01)	28,419	240,835

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The reduction in sentence length that this bill proposes would decrease the length of time offenders are under the Department of Corrections supervision after serving their sentence. This savings would not be realized until fiscal 2000.

The Department of Corrections estimates that approximately 400 fourth offense DUI cases have not been adjudicated.

*Dave Lewis* 3-12-97  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Loren Soft* 3-12-97  
 LOREN SOFT, PRIMARY SPONSOR DATE

Fiscal Note for HB0100, second reading

**Am HB 100 - #2**

1 HOUSE BILL NO. 100  
2 INTRODUCED BY SOFT  
3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE  
6 INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING  
7 SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.**

## 1 HOUSE BILL NO. 100

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE  
6 INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING  
7 SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10

11 **Section 1.** Section 61-8-714, MCA, is amended to read:

12 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
13 subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
14 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
15 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
16 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
17 or mental well-being.

18 (2) Except as provided in subsection (8), on a second conviction, the person shall be punished by  
19 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
20 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
21 (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition  
22 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

23 (3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished  
24 by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served  
25 consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as  
26 provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of  
27 execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of  
28 the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may  
29 not be suspended.

30 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed

1 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
2 seized and subjected to the procedure provided under 61-8-421.

3 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
4 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
5 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
6 omission established by the owner to have been committed or omitted by a person other than the owner  
7 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
8 criminal laws of this state or the United States.

9 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
10 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
11 or other act on which the forfeiture is sought.

12 (4) (a) On the fourth or subsequent conviction, the person ~~is guilty of a felony offense and IS~~  
13 GUILTY OF A FELONY OFFENSE AND shall be punished by imprisonment for a term of not less than ~~1 year~~  
14 6 months or more than ~~10 years~~ 1 year 13 MONTHS and by a fine of not less than \$1,000 or more than  
15 \$10,000. ~~Except as provided in subsection (8), notwithstanding any provision to the contrary providing for~~  
16 ~~suspension of execution of a sentence imposed under this subsection, the~~ The imposition or execution of  
17 ~~the first 6 months of the~~ imprisonment sentence imposed for a fourth or subsequent offense may not be  
18 suspended. ~~The person is not eligible for parole.~~

19 (b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve  
20 a supervised release term of not less than 1 year or more than 2 years. The release must be supervised  
21 by the department of corrections, which may order all or any portion of the supervised release term to be  
22 served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation  
23 apply to the supervised release.

24 (c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions  
25 during the period of supervised release. Reasonable restrictions or conditions may include:

26 (i) conditions for supervised release;

27 (ii) payment of a fine as provided in 46-18-231;

28 (iii) payment of costs as provided in 46-18-232 and 46-18-233;

29 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

30 (v) community service;

1 (vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
 2 protection of society; or

3 (vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).

4 (d) If a violation of the restrictions or conditions of the supervised release is established, the court  
 5 may continue the period of supervised release or may require the defendant to serve the remainder of the  
 6 supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the  
 7 remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with  
 8 all or part of the time already served on supervised release.

9 (e) ~~The person may not be sentenced to the department of corrections for placement in an~~  
 10 ~~appropriate correctional institution or program.~~ The court shall specify one of the following facilities as the  
 11 place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE  
 12 PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE  
 13 CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be  
 14 specified BY THE COURT without the prior approval of the department of corrections:

15 (i) a state prison;

16 (ii) a regional correctional facility;

17 (iii) a county jail;

18 (iv) a boot camp;

19 (v) a prerelease center;

20 (VI) A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY.

21 (f) The court shall order a person who is financially able to do so to pay the costs of imprisonment  
 22 and supervised release under this subsection (4) and of the information course and treatment under  
 23 subsection (5).

24 (G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN  
 25 SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE  
 26 OFFENDER IN ANOTHER FACILITY OR PROGRAM.

27 (5) In addition to the punishment provided in this section, regardless of disposition, the defendant  
 28 shall complete an alcohol information course at an alcohol treatment program approved by the department  
 29 of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug  
 30 treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made

1 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
2 by the department of public health and human services. On conviction of a second or subsequent offense  
3 under this section, in addition to the punishment provided in this section, regardless of disposition, the  
4 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
5 department of public health and human services, which must include alcohol or drug treatment, or both.  
6 As long as the alcohol information course is approved as provided in this subsection and the treatment is  
7 provided by a certified chemical dependency counselor, the defendant may attend the information course  
8 and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment  
9 program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined  
10 by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted  
11 by the department of corrections. Upon determination, the court shall order the defendant's appropriate  
12 level of treatment. If more than one counselor makes a determination as provided in this subsection, the  
13 court shall order an appropriate level of treatment based upon the determination of one of the counselors.  
14 On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for  
15 a period of at least 1 year from the date of admission to the program. A court or counselor may not require  
16 attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help  
17 program. A defendant may voluntarily participate in self-help programs. Each counselor providing education  
18 or treatment shall, at the commencement of the education or treatment, notify the court that the defendant  
19 has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend  
20 the information course or treatment program, the counselor shall notify the court of the failure.

21 (6) For the purpose of determining the number of convictions under this section, "conviction"  
22 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
23 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
24 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
25 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
26 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
27 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
28 there has not been an additional conviction for an offense under this section for a period of 5 years after  
29 a prior conviction under this section, then all records and data relating to the prior conviction are  
30 confidential criminal justice information, as defined in 44-5-103, and public access to the information may



1 only be obtained by district court order upon good cause shown.

2 (7) For the purpose of calculating subsequent convictions under this section, a conviction for a  
3 violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

4 (8) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second,  
5 or third offense be served in another facility made available by the county and approved by the sentencing  
6 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court  
7 may impose restrictions on the defendant's ability to leave the premises of the facility and require that the  
8 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
9 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant  
10 referred by the sentencing court.

11 (9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
12 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
13 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
14 chapter 18, part 10.

15 (10) A court may not defer imposition of sentence under this section."  
16

17 **Section 2.** Section 61-8-722, MCA, is amended to read:

18 "**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
19 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
20 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

21 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
22 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
23 by a fine of not less than \$300 or more than \$500.

24 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
25 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
26 and by a fine of not less than \$500 or more than \$1,000.

27 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
28 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
29 seized and subjected to the procedure provided under 61-8-421.

30 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common

1 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
 2 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
 3 omission established by the owner to have been committed or omitted by a person other than the owner  
 4 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
 5 criminal laws of this state or the United States.

6 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
 7 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
 8 or other act on which the forfeiture is sought.

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 10 GUILTY OF A FELONY OFFENSE AND shall be punished by imprisonment for a term of not less than ~~1 year~~  
 11 6 months or more than ~~10 years~~ 1 year 13 MONTHS and by a fine of not less than \$1,000 or more than  
 12 \$10,000. ~~Except as provided in subsection (9), notwithstanding any other provision providing for~~  
 13 ~~suspension of execution of a sentence imposed under this subsection, the~~ The imposition or execution of  
 14 the ~~first 6 months of the~~ imprisonment sentence imposed for a fourth or subsequent offense may not be  
 15 suspended. The person is not eligible for parole.

16 (b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve  
 17 a supervised release term of not less than 1 year or more than 2 years. The release must be supervised  
 18 by the department of corrections, which may order all or any portion of the supervised release term to be  
 19 served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation  
 20 apply to the supervised release.

21 (c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions  
 22 during the period of supervised release. Reasonable restrictions or conditions may include:

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26 (iv) payment of costs of court-appointed counsel as provided in 46-8-113;

27 (v) community service;

28 (vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
 29 protection of society; or

30 (vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).

1 (d) If a violation of the restrictions or conditions of the supervised release is established, the court  
2 may continue the period of supervised release or may require the defendant to serve the remainder of the  
3 supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the  
4 remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with  
5 all or part of the time already served on supervised release.

6 (e) ~~The person may not be sentenced to the department of corrections for placement in an~~  
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8 place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE  
9 PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE  
10 CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be  
11 specified BY THE COURT without the prior approval of the department of corrections:

12 (i) a state prison;

13 (ii) a regional correctional facility;

14 (iii) a county jail;

15 (iv) a boot camp;

16 (v) a prerelease center.

17 (f) The court shall order a person who is financially able to do so to pay the costs of imprisonment  
18 and supervised release under this subsection (4) and of the information course and treatment under  
19 subsection (6).

20 (G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN  
21 SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE  
22 OFFENDER IN ANOTHER FACILITY OR PROGRAM.

23 (5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
24 suspension of driver's licenses, apply to any conviction under 61-8-406.

25 (6) In addition to the punishment provided in this section, regardless of disposition, the defendant  
26 shall complete an alcohol information course at an alcohol treatment program approved by the department  
27 of public health and human services, which must include alcohol or drug treatment, or both, in accordance  
28 with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the  
29 commencement of the education or treatment, notify the court that the defendant has been enrolled in a  
30 course or treatment program. If the defendant fails to attend the course or the treatment program, the

1 counselor shall notify the court of the failure.

2 (7) For the purpose of determining the number of convictions under this section, "conviction"  
3 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
4 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
5 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
6 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
7 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
8 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
9 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
10 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
11 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
12 court order upon good cause shown.

13 (8) For the purpose of calculating subsequent convictions under this section, a conviction for a  
14 violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

15 (9) The court may order that a term of imprisonment imposed ~~under this section~~ for a first, second,  
16 or third offense be served in another facility made available by the county and approved by the sentencing  
17 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court  
18 may impose restrictions on the defendant's ability to leave the premises of the facility and require that the  
19 defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based  
20 prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant  
21 referred by the sentencing court.

22 (10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
23 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
24 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
25 chapter 18, part 10.

26 (11) A court may not defer imposition of sentence under this section."  
27

28 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.  
29

-END-

1 HOUSE BILL NO. 100  
2 INTRODUCED BY SOFT  
3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE  
6 INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING  
7 SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10

11 Section 1. Section 61-8-714, MCA, is amended to read:

12 "61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in  
13 subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
14 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
15 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
16 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
17 or mental well-being.

18 (2) Except as provided in subsection (8), on a second conviction, the person shall be punished by  
19 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
20 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
21 (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition  
22 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

23 (3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished  
24 by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served  
25 consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as  
26 provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of  
27 execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of  
28 the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may  
29 not be suspended.

30 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed

1 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
2 seized and subjected to the procedure provided under 61-8-421.

3 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
4 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
5 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
6 omission established by the owner to have been committed or omitted by a person other than the owner  
7 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
8 criminal laws of this state or the United States.

9 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
10 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
11 or other act on which the forfeiture is sought.

12 ~~(4) (a) On the fourth or subsequent conviction, the person is guilty of a felony offense and IS~~  
13 ~~GUILTY OF A FELONY OFFENSE AND~~ shall be punished by imprisonment for a term of not less than 1 year  
14 ~~6 months or more than 10 years 1 year 13 MONTHS~~ and by a fine of not less than \$1,000 or more than  
15 \$10,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for  
16 suspension of execution of a sentence imposed under this subsection, the ~~The~~ imposition or execution of  
17 the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be  
18 suspended. ~~The person is not eligible for parole.~~

19 ~~(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve~~  
20 ~~a supervised release term of not less than 1 year or more than 2 years. The release must be supervised~~  
21 ~~by the department of corrections, which may order all or any portion of the supervised release term to be~~  
22 ~~served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation~~  
23 ~~apply to the supervised release.~~

24 ~~(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions~~  
25 ~~during the period of supervised release. Reasonable restrictions or conditions may include:~~

26 ~~(i) conditions for supervised release;~~

27 ~~(ii) payment of a fine as provided in 46-18-231;~~

28 ~~(iii) payment of costs as provided in 46-18-232 and 46-18-233;~~

29 ~~(iv) payment of costs of court-appointed counsel as provided in 46-8-113;~~

30 ~~(v) community service;~~

1 ~~(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the~~  
 2 ~~protection of society; or~~

3 ~~(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).~~

4 ~~(d) If a violation of the restrictions or conditions of the supervised release is established, the court~~  
 5 ~~may continue the period of supervised release or may require the defendant to serve the remainder of the~~  
 6 ~~supervised release sentence in one of the facilities set forth in subsection (4)(c). The court may credit the~~  
 7 ~~remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(c) with~~  
 8 ~~all or part of the time already served on supervised release.~~

9 ~~(e) The person may not be sentenced to the department of corrections for placement in an~~  
 10 ~~appropriate correctional institution or program. The court shall specify one of the following facilities as the~~  
 11 ~~place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE~~  
 12 ~~PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE~~  
 13 ~~CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be~~  
 14 ~~specified BY THE COURT without the prior approval of the department of corrections:~~

15 ~~(i) a state prison;~~

16 ~~(ii) a regional correctional facility;~~

17 ~~(iii) a county jail;~~

18 ~~(iv) a boot camp;~~

19 ~~(v) a prerelease center;~~

20 ~~(VI) A STATE APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY.~~

21 ~~(f) The court shall order a person who is financially able to do so to pay the costs of imprisonment~~  
 22 ~~and supervised release under this subsection (4) and of the information course and treatment under~~  
 23 ~~subsection (5).~~

24 ~~(G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN~~  
 25 ~~SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE~~  
 26 ~~OFFENDER IN ANOTHER FACILITY OR PROGRAM.~~

27 ~~(5)(4)~~ In addition to the punishment provided in this section, regardless of disposition, the  
 28 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
 29 department of public health and human services, which may include alcohol or drug treatment, or both.  
 30 Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical

1 dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient  
2 placement rules adopted by the department of public health and human services. On conviction of a second  
3 or subsequent offense under this section, in addition to the punishment provided in this section, regardless  
4 of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program  
5 approved by the department of public health and human services, which must include alcohol or drug  
6 treatment, or both. As long as the alcohol information course is approved as provided in this subsection  
7 and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the  
8 information course and treatment program of the defendant's choice. The treatment provided to the  
9 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,  
10 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient  
11 placement rules adopted by the department of corrections. Upon determination, the court shall order the  
12 defendant's appropriate level of treatment. If more than one counselor makes a determination as provided  
13 in this subsection, the court shall order an appropriate level of treatment based upon the determination of  
14 one of the counselors. On a second or subsequent conviction, the treatment program must be followed by  
15 monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or  
16 counselor may not require attendance at a self-help program other than at an "open meeting" as that term  
17 is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each  
18 counselor providing education or treatment shall, at the commencement of the education or treatment,  
19 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
20 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
21 court of the failure.

22 ~~(6)~~(5) For the purpose of determining the number of convictions under this section, "conviction"  
23 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
24 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
25 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
26 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
27 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
28 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
29 there has not been an additional conviction for an offense under this section for a period of 5 years after  
30 a prior conviction under this section, then all records and data relating to the prior conviction are



1 confidential criminal justice information, as defined in 44-5-103, and public access to the information may  
2 only be obtained by district court order upon good cause shown.

3 ~~(7)(6)~~ For the purpose of calculating subsequent convictions under this section, a conviction for  
4 a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

5 ~~(8)(7)~~ The court may order that a term of imprisonment imposed ~~under this section~~ for a first,  
6 second, or third offense be served in another facility made available by the county and approved by the  
7 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the  
8 facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility  
9 and require that the defendant follow the rules of that facility. The facility may be, but is not required to  
10 be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept  
11 or reject a defendant referred by the sentencing court.

12 ~~(9)(8)~~ Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
13 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
14 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
15 chapter 18, part 10.

16 ~~(40)(9)~~ A court may not defer imposition of sentence under this section."  
17

18 **Section 2.** Section 61-8-722, MCA, is amended to read:

19 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
20 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
21 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

22 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
23 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
24 by a fine of not less than \$300 or more than \$500.

25 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
26 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
27 and by a fine of not less than \$500 or more than \$1,000.

28 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
29 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
30 seized and subjected to the procedure provided under 61-8-421.

1 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
 2 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
 3 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
 4 omission established by the owner to have been committed or omitted by a person other than the owner  
 5 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
 6 criminal laws of this state or the United States.

7 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
 8 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
 9 or other act on which the forfeiture is sought.

10 ~~(4) (a) On the fourth or subsequent conviction, the person is guilty of a felony offense and IS~~  
 11 ~~GUILTY OF A FELONY OFFENSE AND shall be punished by imprisonment for a term of not less than 1 year~~  
 12 ~~6 months or more than 10 years 1 year 13 MONTHS and by a fine of not less than \$1,000 or more than~~  
 13 ~~\$10,000. Except as provided in subsection (9), notwithstanding any other provision providing for~~  
 14 ~~suspension of execution of a sentence imposed under this subsection, the The imposition or execution of~~  
 15 ~~the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be~~  
 16 ~~suspended. The person is not eligible for parole.~~

17 ~~(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve~~  
 18 ~~a supervised release term of not less than 1 year or more than 2 years. The release must be supervised~~  
 19 ~~by the department of corrections, which may order all or any portion of the supervised release term to be~~  
 20 ~~served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation~~  
 21 ~~apply to the supervised release.~~

22 ~~(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions~~  
 23 ~~during the period of supervised release. Reasonable restrictions or conditions may include:~~

24 ~~(i) conditions for supervised release;~~

25 ~~(ii) payment of a fine as provided in 46-18-231;~~

26 ~~(iii) payment of costs as provided in 46-18-232 and 46-18-233;~~

27 ~~(iv) payment of costs of court appointed counsel as provided in 46-8-113;~~

28 ~~(v) community service;~~

29 ~~(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the~~  
 30 ~~protection of society; or~~

1 ~~(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).~~

2 ~~(d) If a violation of the restrictions or conditions of the supervised release is established, the court~~  
 3 ~~may continue the period of supervised release or may require the defendant to serve the remainder of the~~  
 4 ~~supervised release sentence in one of the facilities set forth in subsection (4)(c). The court may credit the~~  
 5 ~~remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(c) with~~  
 6 ~~all or part of the time already served on supervised release.~~

7 ~~(e) The person may not be sentenced to the department of corrections for placement in an~~  
 8 ~~appropriate correctional institution or program. The court shall specify one of the following facilities as the~~  
 9 ~~place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE~~  
 10 ~~PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE~~  
 11 ~~CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be~~  
 12 ~~specified BY THE COURT without the prior approval of the department of corrections:~~

13 ~~(i) a state prison;~~

14 ~~(ii) a regional correctional facility;~~

15 ~~(iii) a county jail;~~

16 ~~(iv) a boot camp;~~

17 ~~(v) a prerelease center.~~

18 ~~(f) The court shall order a person who is financially able to do so to pay the costs of imprisonment~~  
 19 ~~and supervised release under this subsection (4) and of the information course and treatment under~~  
 20 ~~subsection (6).~~

21 ~~(G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN~~  
 22 ~~SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE~~  
 23 ~~OFFENDER IN ANOTHER FACILITY OR PROGRAM.~~

24 ~~(6)(4)~~ The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
 25 suspension of driver's licenses, apply to any conviction under 61-8-406.

26 ~~(6)(5)~~ In addition to the punishment provided in this section, regardless of disposition, the  
 27 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
 28 department of public health and human services, which must include alcohol or drug treatment, or both,  
 29 in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at  
 30 the commencement of the education or treatment, notify the court that the defendant has been enrolled

1 in a course or treatment program. If the defendant fails to attend the course or the treatment program, the  
2 counselor shall notify the court of the failure.

3 ~~(7)~~(6) For the purpose of determining the number of convictions under this section, "conviction"  
4 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
5 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
6 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
7 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
8 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
9 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
10 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
11 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
12 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
13 court order upon good cause shown.

14 ~~(8)~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for  
15 a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

16 ~~(9)~~(8) The court may order that a term of imprisonment imposed ~~under this section~~ for a first,  
17 second, or third offense be served in another facility made available by the county and approved by the  
18 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the  
19 facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility  
20 and require that the defendant follow the rules of that facility. The facility may be, but is not required to  
21 be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept  
22 or reject a defendant referred by the sentencing court.

23 ~~(10)~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
24 ~~subsequent~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
25 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
26 chapter 18, part 10.

27 ~~(11)~~(10) A court may not defer imposition of sentence under this section."  
28

29 **NEW SECTION. SECTION 3. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DRIVING**  
30 **WITH EXCESSIVE ALCOHOL CONCENTRATION -- PENALTY FOR FOURTH OR SUBSEQUENT OFFENSE.**

1 (1) ON THE FOURTH OR SUBSEQUENT CONVICTION UNDER 61-8-714 OR 61-8-722 FOR A VIOLATION  
2 OF 61-8-401 OR 61-8-406, THE PERSON IS GUILTY OF A FELONY AND SHALL BE PUNISHED BY:

3 (A) IMPRISONMENT FOR A TERM OF NOT LESS THAN 6 MONTHS OR MORE THAN 13 MONTHS,  
4 THE IMPOSITION OR EXECUTION OF WHICH MAY NOT BE SUSPENDED, AND THE PERSON IS NOT  
5 ELIGIBLE FOR PAROLE;

6 (B) A SUPERVISED RELEASE TERM OF NOT LESS THAN 1 YEAR OR MORE THAN 4 YEARS; AND

7 (C) A FINE OF NOT LESS THAN \$1,000 [\$1,500] OR MORE THAN \$10,000.

8 (2) THE COURT SHALL, SUBJECT TO SENTENCING RESTRICTIONS:

9 (A) SPECIFY ONE OF THE FOLLOWING FACILITIES AS THE INITIAL PLACE IN WHICH THE TERM  
10 OF IMPRISONMENT MUST BE SERVED:

11 (I) A STATE PRISON;

12 (II) A REGIONAL CORRECTIONAL FACILITY;

13 (III) A COUNTY JAIL;

14 (IV) A BOOT CAMP, PROVIDED THE PRIOR APPROVAL OF THE DEPARTMENT OF CORRECTIONS  
15 HAS BEEN OBTAINED; OR

16 (V) A PRERELEASE CENTER, PROVIDED THE PRIOR APPROVAL OF THE DEPARTMENT OF  
17 CORRECTIONS HAS BEEN OBTAINED; OR

18 (B) SENTENCE THE PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN  
19 APPROPRIATE CORRECTIONAL INSTITUTION OR PROGRAM; AND

20 (C) ORDER A PERSON WHO IS FINANCIALLY ABLE TO PAY THE COSTS OF IMPRISONMENT AND  
21 SUPERVISED RELEASE UNDER THIS SECTION AND OF THE INFORMATION COURSE AND TREATMENT  
22 UNDER [SECTION 9 OF HOUSE BILL NO. 559].

23 (3) THE SENTENCING JUDGE MAY IMPOSE UPON THE DEFENDANT ANY REASONABLE  
24 RESTRICTIONS OR CONDITIONS DURING THE PERIOD OF SUPERVISED RELEASE. REASONABLE  
25 RESTRICTIONS OR CONDITIONS MAY INCLUDE:

26 (A) CONDITIONS FOR SUPERVISED RELEASE;

27 (B) PAYMENT OF A FINE AS PROVIDED IN 46-18-231;

28 (C) PAYMENT OF COSTS AS PROVIDED IN 46-18-232 AND 46-18-233;

29 (D) PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL AS PROVIDED IN 46-8-113;

30 (E) COMMUNITY SERVICE;

1 (F) ANY OTHER REASONABLE RESTRICTIONS OR CONDITIONS CONSIDERED NECESSARY FOR  
2 REHABILITATION OR FOR THE PROTECTION OF SOCIETY;

3 (G) TREATMENT IN A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY; OR

4 (H) ANY COMBINATION OF THE RESTRICTIONS OR CONDITIONS LISTED IN SUBSECTIONS (3)(A)  
5 THROUGH (3)(G).

6 (4) (A) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A BOOT CAMP OR A PRERELEASE  
7 CENTER UNDER SUBSECTION (2)(A), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION,  
8 PLACE THE OFFENDER IN ANOTHER FACILITY OR PROGRAM.

9 (B) THE TERM OF SUPERVISED RELEASE MUST BE SUPERVISED BY THE DEPARTMENT OF  
10 CORRECTIONS, WHICH MAY ORDER ALL OR ANY PORTION OF THE SUPERVISED RELEASE TERM TO  
11 BE SERVED UNDER INTENSIVE SUPERVISION. THE PROVISIONS OF TITLE 46, CHAPTER 23, PART 10,  
12 RELATING TO PROBATION, APPLY TO THE SUPERVISED RELEASE.

13 (5) IF A VIOLATION OF THE RESTRICTIONS OR CONDITIONS OF THE SUPERVISED RELEASE IS  
14 ESTABLISHED, THE COURT MAY CONTINUE THE PERIOD OF SUPERVISED RELEASE OR MAY REQUIRE  
15 THE DEFENDANT TO SERVE THE REMAINDER OF THE SUPERVISED RELEASE SENTENCE IN ONE OF THE  
16 FACILITIES SET FORTH IN SUBSECTION (2)(A) OR (2)(B). THE COURT MAY CREDIT THE REMAINDER OF  
17 THE SUPERVISED RELEASE OR THE TIME TO BE SERVED IN A FACILITY SET FORTH IN SUBSECTION  
18 (2)(A) OR (2)(B) WITH ALL OR PART OF THE TIME ALREADY SERVED ON SUPERVISED RELEASE.

19  
20 NEW SECTION. SECTION 4. COORDINATION. (1) IF HOUSE BILL NO. 559 AND [THIS ACT] ARE  
21 PASSED AND APPROVED, THEN SUBSECTION (1) OF THE COORDINATION INSTRUCTION IN HOUSE BILL  
22 NO. 559 IS VOID, THE BRACKETED REFERENCES TO "SECTION 13" IN HOUSE BILL NO. 559 ARE  
23 REPLACED WITH A REFERENCE TO [SECTION 3] OF HOUSE BILL NO. 100, AND [SECTION 13], INSERTED  
24 BY THE COORDINATION INSTRUCTION IN HOUSE BILL NO. 559, IS REPLACED WITH [SECTION 3] OF  
25 [THIS ACT].

26 (2) IF HOUSE BILL NO. 208 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE  
27 BRACKETED AMOUNT IN [SECTION 3] IS EFFECTIVE.

28  
29 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

30 -END-

## 1 HOUSE BILL NO. 100

2 INTRODUCED BY SOFT

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE  
6 INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING  
7 SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10

11 **Section 1.** Section 61-8-714, MCA, is amended to read:

12 **"61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in  
13 subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment  
14 in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a  
15 fine of not less than \$100 or more than \$500. The imprisonment sentence may not be suspended unless  
16 the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical  
17 or mental well-being.

18 (2) Except as provided in subsection (8), on a second conviction, the person shall be punished by  
19 a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days, at least 48  
20 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection  
21 (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition  
22 of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

23 (3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished  
24 by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served  
25 consecutively, or more than 1 year and by a fine of not less than \$500 or more than \$1,000. Except as  
26 provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of  
27 execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of  
28 the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may  
29 not be suspended.

30 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed

1 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
2 seized and subjected to the procedure provided under 61-8-421.

3 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
4 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
5 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
6 omission established by the owner to have been committed or omitted by a person other than the owner  
7 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
8 criminal laws of this state or the United States.

9 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
10 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
11 or other act on which the forfeiture is sought.

12 ~~(4) (a) On the fourth or subsequent conviction, the person is guilty of a felony offense and IS~~  
13 ~~GUILTY OF A FELONY OFFENSE AND shall be punished by imprisonment for a term of not less than 1 year~~  
14 ~~6 months or more than 10 years 1 year 13 MONTHS and by a fine of not less than \$1,000 or more than~~  
15 ~~\$10,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for~~  
16 ~~suspension of execution of a sentence imposed under this subsection, the The imposition or execution of~~  
17 ~~the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be~~  
18 ~~suspended. The person is not eligible for parole.~~

19 ~~(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve~~  
20 ~~a supervised release term of not less than 1 year or more than 2 years. The release must be supervised~~  
21 ~~by the department of corrections, which may order all or any portion of the supervised release term to be~~  
22 ~~served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation~~  
23 ~~apply to the supervised release.~~

24 ~~(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions~~  
25 ~~during the period of supervised release. Reasonable restrictions or conditions may include:~~

26 ~~(i) conditions for supervised release;~~

27 ~~(ii) payment of a fine as provided in 46-18-231;~~

28 ~~(iii) payment of costs as provided in 46-18-232 and 46-18-233;~~

29 ~~(iv) payment of costs of court-appointed counsel as provided in 46-8-113;~~

30 ~~(v) community service;~~



1 ~~(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the~~  
 2 ~~protection of society; or~~

3 ~~(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).~~

4 ~~(d) If a violation of the restrictions or conditions of the supervised release is established, the court~~  
 5 ~~may continue the period of supervised release or may require the defendant to serve the remainder of the~~  
 6 ~~supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the~~  
 7 ~~remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with~~  
 8 ~~all or part of the time already served on supervised release.~~

9 ~~(e) The person may not be sentenced to the department of corrections for placement in an~~  
 10 ~~appropriate correctional institution or program. The court shall specify one of the following facilities as the~~  
 11 ~~place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE~~  
 12 ~~PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE~~  
 13 ~~CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be~~  
 14 ~~specified BY THE COURT without the prior approval of the department of corrections:~~

15 ~~(i) a state prison;~~

16 ~~(ii) a regional correctional facility;~~

17 ~~(iii) a county jail;~~

18 ~~(iv) a boot camp;~~

19 ~~(v) a prerelease center;~~

20 ~~(VI) A STATE APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY.~~

21 ~~(f) The court shall order a person who is financially able to do so to pay the costs of imprisonment~~  
 22 ~~and supervised release under this subsection (4) and of the information course and treatment under~~  
 23 ~~subsection (5).~~

24 ~~(G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN~~  
 25 ~~SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE~~  
 26 ~~OFFENDER IN ANOTHER FACILITY OR PROGRAM.~~

27 ~~(5)(4)~~ In addition to the punishment provided in this section, regardless of disposition, the  
 28 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
 29 department of public health and human services, which may include alcohol or drug treatment, or both.  
 30 Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical

1 dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient  
2 placement rules adopted by the department of public health and human services. On conviction of a second  
3 or subsequent offense under this section, in addition to the punishment provided in this section, regardless  
4 of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program  
5 approved by the department of public health and human services, which must include alcohol or drug  
6 treatment, or both. As long as the alcohol information course is approved as provided in this subsection  
7 and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the  
8 information course and treatment program of the defendant's choice. The treatment provided to the  
9 defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem,  
10 or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient  
11 placement rules adopted by the department of corrections. Upon determination, the court shall order the  
12 defendant's appropriate level of treatment. If more than one counselor makes a determination as provided  
13 in this subsection, the court shall order an appropriate level of treatment based upon the determination of  
14 one of the counselors. On a second or subsequent conviction, the treatment program must be followed by  
15 monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or  
16 counselor may not require attendance at a self-help program other than at an "open meeting" as that term  
17 is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each  
18 counselor providing education or treatment shall, at the commencement of the education or treatment,  
19 notify the court that the defendant has been enrolled in an alcohol information course or treatment program.  
20 If the defendant fails to attend the information course or treatment program, the counselor shall notify the  
21 court of the failure.

22 ~~(6)(5)~~ For the purpose of determining the number of convictions under this section, "conviction"  
23 means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute  
24 in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court  
25 in this state or another state, which forfeiture has not been vacated. An offender is considered to have  
26 been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the  
27 commission of the present offense and a previous conviction, unless the offense is the offender's fourth  
28 or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If  
29 there has not been an additional conviction for an offense under this section for a period of 5 years after  
30 a prior conviction under this section, then all records and data relating to the prior conviction are

1 confidential criminal justice information, as defined in 44-5-103, and public access to the information may  
2 only be obtained by district court order upon good cause shown.

3 ~~(7)(6)~~ For the purpose of calculating subsequent convictions under this section, a conviction for  
4 a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

5 ~~(8)(7)~~ The court may order that a term of imprisonment imposed ~~under this section~~ for a first,  
6 second, or third offense be served in another facility made available by the county and approved by the  
7 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the  
8 facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility  
9 and require that the defendant follow the rules of that facility. The facility may be, but is not required to  
10 be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept  
11 or reject a defendant referred by the sentencing court.

12 ~~(9)(8)~~ Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
13 ~~subsequent third~~ offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
14 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
15 chapter 18, part 10.

16 ~~(10)(9)~~ A court may not defer imposition of sentence under this section."  
17

18 **Section 2.** Section 61-8-722, MCA, is amended to read:

19 **"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in  
20 subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not  
21 more than 10 days and shall be punished by a fine of not less than \$100 or more than \$500.

22 (2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the  
23 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and  
24 by a fine of not less than \$300 or more than \$500.

25 (3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the  
26 person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months  
27 and by a fine of not less than \$500 or more than \$1,000.

28 (b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed  
29 by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be  
30 seized and subjected to the procedure provided under 61-8-421.

1 (ii) A vehicle used by a person as a common carrier in the transaction of business as a common  
 2 carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle  
 3 consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or  
 4 omission established by the owner to have been committed or omitted by a person other than the owner  
 5 while the vehicle was unlawfully in the possession of a person other than the owner in violation of the  
 6 criminal laws of this state or the United States.

7 (iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's  
 8 interest if the person did not know and could not have reasonably known of the unlawful possession, use,  
 9 or other act on which the forfeiture is sought.

10 ~~(4) (a) On the fourth or subsequent conviction, the person is guilty of a felony offense and IS~~  
 11 ~~GUILTY OF A FELONY OFFENSE AND shall be punished by imprisonment for a term of not less than 1 year~~  
 12 ~~6 months or more than 10 years 1 year 13 MONTHS and by a fine of not less than \$1,000 or more than~~  
 13 ~~\$10,000. Except as provided in subsection (9), notwithstanding any other provision providing for~~  
 14 ~~suspension of execution of a sentence imposed under this subsection, the The imposition or execution of~~  
 15 ~~the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be~~  
 16 ~~suspended. The person is not eligible for parole.~~

17 ~~(b) After serving the term of imprisonment imposed under subsection (4)(a), the person shall serve~~  
 18 ~~a supervised release term of not less than 1 year or more than 2 years. The release must be supervised~~  
 19 ~~by the department of corrections, which may order all or any portion of the supervised release term to be~~  
 20 ~~served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation~~  
 21 ~~apply to the supervised release.~~

22 ~~(c) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions~~  
 23 ~~during the period of supervised release. Reasonable restrictions or conditions may include:~~

24 ~~(i) conditions for supervised release;~~

25 ~~(ii) payment of a fine as provided in 46-18-231;~~

26 ~~(iii) payment of costs as provided in 46-18-232 and 46-18-233;~~

27 ~~(iv) payment of costs of court-appointed counsel as provided in 46-8-113;~~

28 ~~(v) community service;~~

29 ~~(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the~~  
 30 ~~protection of society; or~~

1 ~~(vii) any combination of the restrictions or conditions in subsections (4)(c)(i) through (4)(c)(vi).~~

2 ~~(d) If a violation of the restrictions or conditions of the supervised release is established, the court~~  
3 ~~may continue the period of supervised release or may require the defendant to serve the remainder of the~~  
4 ~~supervised release sentence in one of the facilities set forth in subsection (4)(e). The court may credit the~~  
5 ~~remainder of the supervised release or the time to be served in a facility set forth in subsection (4)(e) with~~  
6 ~~all or part of the time already served on supervised release.~~

7 ~~(e) The person may not be sentenced to the department of corrections for placement in an~~  
8 ~~appropriate correctional institution or program. The court shall specify one of the following facilities as the~~  
9 ~~place in which the INITIAL term of imprisonment must be served, OR THE COURT SHALL SENTENCE THE~~  
10 ~~PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN APPROPRIATE~~  
11 ~~CORRECTIONAL INSTITUTION OR PROGRAM, except that a prerelease center or boot camp may not be~~  
12 ~~specified BY THE COURT without the prior approval of the department of corrections:~~

13 ~~(i) a state prison;~~

14 ~~(ii) a regional correctional facility;~~

15 ~~(iii) a county jail;~~

16 ~~(iv) a boot camp;~~

17 ~~(v) a prerelease center.~~

18 ~~(f) The court shall order a person who is financially able to do so to pay the costs of imprisonment~~  
19 ~~and supervised release under this subsection (4) and of the information course and treatment under~~  
20 ~~subsection (6).~~

21 ~~(G) FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A FACILITY SET FORTH IN~~  
22 ~~SUBSECTION (4)(E), THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION, PLACE THE~~  
23 ~~OFFENDER IN ANOTHER FACILITY OR PROGRAM.~~

24 ~~(4)~~ The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and  
25 suspension of driver's licenses, apply to any conviction under 61-8-406.

26 ~~(5)~~ In addition to the punishment provided in this section, regardless of disposition, the  
27 defendant shall complete an alcohol information course at an alcohol treatment program approved by the  
28 department of public health and human services, which must include alcohol or drug treatment, or both,  
29 in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at  
30 the commencement of the education or treatment, notify the court that the defendant has been enrolled

1 in a course or treatment program. If the defendant fails to attend the course or the treatment program, the  
2 counselor shall notify the court of the failure.

3 ~~(7)(6)~~ For the purpose of determining the number of convictions under this section, "conviction"  
4 means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a  
5 forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or  
6 another state, which forfeiture has not been vacated. An offender is considered to have been previously  
7 convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the  
8 present offense and a previous conviction, unless the offense is the offender's fourth or subsequent  
9 offense, in which case all previous convictions must be used for sentencing purposes. If there has not been  
10 an additional conviction for an offense under this section for a period of 5 years after a prior conviction  
11 under this section, then all records and data relating to the prior conviction are confidential criminal justice  
12 information, as defined in 45-5-103, and public access to the information may only be obtained by district  
13 court order upon good cause shown.

14 ~~(8)(7)~~ For the purpose of calculating subsequent convictions under this section, a conviction for  
15 a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

16 ~~(9)(8)~~ The court may order that a term of imprisonment imposed ~~under this section~~ for a first,  
17 second, or third offense be served in another facility made available by the county and approved by the  
18 sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the  
19 facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility  
20 and require that the defendant follow the rules of that facility. The facility may be, but is not required to  
21 be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept  
22 or reject a defendant referred by the sentencing court.

23 ~~(10)(9)~~ Except for the initial 24 hours on a first offense or the initial 48 hours on a second or  
24 ~~subsequent third~~ third offense, the court may order that a term of imprisonment imposed ~~under this section~~ for  
25 a first, second, or third offense be served by imprisonment under home arrest as provided in Title 46,  
26 chapter 18, part 10.

27 ~~(11)(10)~~ A court may not defer imposition of sentence under this section."  
28

29 **NEW SECTION. SECTION 3. DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS -- DRIVING**  
30 **WITH EXCESSIVE ALCOHOL CONCENTRATION -- PENALTY FOR FOURTH OR SUBSEQUENT OFFENSE.**

1 (1) ON THE FOURTH OR SUBSEQUENT CONVICTION UNDER 61-8-714 OR 61-8-722 FOR A VIOLATION  
 2 OF 61-8-401 OR 61-8-406, THE PERSON IS GUILTY OF A FELONY AND SHALL BE PUNISHED BY:

3 (A) IMPRISONMENT FOR A TERM OF NOT LESS THAN 6 MONTHS OR MORE THAN 13 MONTHS,  
 4 THE IMPOSITION OR EXECUTION OF WHICH MAY NOT BE SUSPENDED, AND DURING WHICH THE  
 5 PERSON IS NOT ELIGIBLE FOR PAROLE;

6 (B) ~~A SUPERVISED RELEASE~~ PROBATION FOR A TERM OF NOT LESS THAN 1 YEAR OR MORE  
 7 THAN 4 YEARS; AND

8 (C) A FINE OF NOT LESS THAN \$1,000 [~~\$1,500~~] OR MORE THAN \$10,000.

9 (2) THE COURT SHALL, SUBJECT TO SENTENCING RESTRICTIONS:

10 (A) SPECIFY ONE OF THE FOLLOWING FACILITIES AS THE INITIAL PLACE IN WHICH THE TERM  
 11 OF IMPRISONMENT MUST BE SERVED:

12 (I) A STATE PRISON;

13 (II) A REGIONAL CORRECTIONAL FACILITY;

14 (III) A COUNTY JAIL;

15 (IV) A BOOT CAMP, PROVIDED THE PRIOR APPROVAL OF THE DEPARTMENT OF CORRECTIONS  
 16 HAS BEEN OBTAINED; OR

17 (V) A PRERELEASE CENTER, PROVIDED THE PRIOR APPROVAL OF THE DEPARTMENT OF  
 18 CORRECTIONS HAS BEEN OBTAINED; OR

19 (B) SENTENCE THE PERSON TO THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT IN AN  
 20 APPROPRIATE CORRECTIONAL INSTITUTION OR PROGRAM; AND

21 (C) ORDER A PERSON WHO IS FINANCIALLY ABLE TO PAY THE COSTS OF IMPRISONMENT AND  
 22 ~~SUPERVISED RELEASE~~ PROBATION UNDER THIS SECTION AND OF THE INFORMATION COURSE AND  
 23 TREATMENT UNDER [SECTION 9 OF HOUSE BILL NO. 559].

24 (3) THE SENTENCING JUDGE MAY IMPOSE UPON THE DEFENDANT ANY REASONABLE  
 25 RESTRICTIONS OR CONDITIONS DURING THE PERIOD OF ~~SUPERVISED RELEASE~~ PROBATION.  
 26 REASONABLE RESTRICTIONS OR CONDITIONS MAY INCLUDE:

27 ~~(A) CONDITIONS FOR SUPERVISED RELEASE;~~

28 ~~(B)(A) PAYMENT OF A FINE AS PROVIDED IN 46-18-231;~~

29 ~~(C)(B) PAYMENT OF COSTS AS PROVIDED IN 46-18-232 AND 46-18-233;~~

30 ~~(D)(C) PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL AS PROVIDED IN 46-8-113;~~

1 ~~(E)(D)~~ COMMUNITY SERVICE;

2 ~~(F)(E)~~ ANY OTHER REASONABLE RESTRICTIONS OR CONDITIONS CONSIDERED NECESSARY FOR  
3 REHABILITATION OR FOR THE PROTECTION OF SOCIETY;

4 ~~(G)(F)~~ TREATMENT IN A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY; OR

5 ~~(H)(G)~~ ANY COMBINATION OF THE RESTRICTIONS OR CONDITIONS LISTED IN SUBSECTIONS  
6 ~~(3)(A)~~ THROUGH ~~(3)(G)~~ ~~(3)(F)~~.

7 ~~(4)(A)~~ FOLLOWING INITIAL PLACEMENT OF A DEFENDANT IN A BOOT CAMP OR A PRERELEASE  
8 CENTER UNDER SUBSECTION ~~(2)(A)~~, THE DEPARTMENT OF CORRECTIONS MAY, AT ITS DISCRETION,  
9 PLACE THE OFFENDER IN ANOTHER FACILITY OR PROGRAM.

10 ~~(B)~~ THE TERM OF SUPERVISED RELEASE MUST BE SUPERVISED BY THE DEPARTMENT OF  
11 CORRECTIONS, WHICH MAY ORDER ALL OR ANY PORTION OF THE SUPERVISED RELEASE TERM OF  
12 PROBATION TO BE SERVED UNDER INTENSIVE SUPERVISION. THE PROVISIONS OF TITLE 46, CHAPTER  
13 23, PART 10, RELATING TO PROBATION, APPLY TO THE SUPERVISED RELEASE PROBATION.

14 ~~(5)~~ IF A VIOLATION OF THE RESTRICTIONS OR CONDITIONS OF THE SUPERVISED RELEASE  
15 PROBATION IS ESTABLISHED, THE COURT MAY CONTINUE THE PERIOD OF SUPERVISED RELEASE  
16 PROBATION OR MAY REQUIRE THE DEFENDANT TO SERVE THE REMAINDER OF THE SUPERVISED  
17 RELEASE PROBATION SENTENCE IN ONE OF THE FACILITIES SET FORTH IN SUBSECTION ~~(2)(A)~~ OR  
18 ~~(2)(B)~~. THE COURT MAY CREDIT THE REMAINDER OF THE SUPERVISED RELEASE PROBATION OR THE  
19 TIME TO BE SERVED IN A FACILITY SET FORTH IN SUBSECTION ~~(2)(A)~~ OR ~~(2)(B)~~ WITH ALL OR PART OF  
20 THE TIME ALREADY SERVED ON SUPERVISED RELEASE PROBATION.

21

22 **NEW SECTION. SECTION 4. COORDINATION.** ~~(1)~~ IF HOUSE BILL NO. 559 AND ~~[THIS ACT]~~ ARE  
23 PASSED AND APPROVED, THEN SUBSECTION ~~(1)~~ OF THE COORDINATION INSTRUCTION IN HOUSE BILL  
24 NO. 559 IS VOID, THE BRACKETED REFERENCES TO "SECTION 13" IN HOUSE BILL NO. 559 ARE  
25 REPLACED WITH A REFERENCE TO ~~[SECTION 3]~~ OF HOUSE BILL NO. 100, AND ~~[SECTION 13]~~, INSERTED  
26 BY THE COORDINATION INSTRUCTION IN HOUSE BILL NO. 559, IS REPLACED WITH ~~[SECTION 3]~~ OF  
27 ~~[THIS ACT]~~.

28 ~~(2)~~ IF HOUSE BILL NO. 208 AND ~~[THIS ACT]~~ ARE BOTH PASSED AND APPROVED, THEN THE  
29 BRACKETED AMOUNT IN ~~[SECTION 3]~~ IS EFFECTIVE.

30



1 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

2 -END-